

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

**PETER LUEBKE,
individually, and on behalf of
all others similarly situated,**

Plaintiff,

CASE NO. 17-cv-969

v.

**WISCONSIN ELECTRIC POWER COMPANY d/b/a
WE ENERGIES,**

Defendant.

**JOINT MOTION FOR PRELIMINARY APPROVAL OF AMENDED CLASS
AND COLLECTIVE ACTION SETTLEMENT**

Plaintiff Peter Luebke (“Luebke”), individually and on behalf of the potential Opt-In Plaintiffs and the putative Class Members, by and through his attorneys, Hawks Quindel, S.C., by Larry Johnson, Summer Murshid, and Tim Maynard, and Defendant Wisconsin Electric Power Company d/b/a We Energies (“We Energies”), by its attorneys, Sean Scullen and Steven Kruzel of Quarles & Brady LLP, submit this Joint Motion for Preliminary Approval of Amended Class and Collective Action Settlement. Luebke and We Energies (“the Parties”), through mediation on September 27, 2018, and subsequent negotiations, reached a settlement in this case on October 15, 2018, on a class-wide basis. In connection with this settlement, the Parties filed for Preliminary Approval of the original Settlement Agreement on November 2, 2018, along with a proposed allocation, a proposed class Notice, a Joint

Stipulation to Certify a Class and a Stipulated Entry of Judgment. (ECF Nos. 60-64.) On November 7, 2018, the Court granted preliminary approval of the Parties' Settlement Agreement, authorized the sending of the Notice and set a fairness hearing for February 12, 2019. (ECF No. 66.) The Parties now submit the Amended Settlement Agreement for approval and respectfully state as follows in support of that request:

1. After the Court entered the Order on Preliminary Approval, during the Notice period, Class Counsel was contacted by class members and potential class members who had questions about the settlement.

2. In response to questions raised during those discussions with class members and potential class members, Class Counsel contacted Defendant's Counsel and worked collaboratively to determine that there was an inadvertently omitted subset of job codes and temporary assignments/position step-ups, and therefore individuals, for which time and payroll data had been either missing or incomplete in Defendant's production.

3. The error was inadvertent and Defendant immediately agreed to remedy the situation.

4. Defendant produced the time and payroll data that had been incomplete or missing for thirty-nine individuals who fell within the Classes' definitions on December 14, 2018.

5. Class Counsel was able to analyze the data and determine that twenty-seven of the thirty-nine individuals for whom data was produced had damages

within the statutory period. Of those twenty-seven, six individuals were included in the original allocation, but were entitled to additional funds based on the additional time and payroll data. The Parties agreed to use the Contingency and Ongoing Cost Fund to provide the \$12,416.74 to those six individuals as that was what the Parties intended in establishing that Fund.

6. There were twenty-one individuals who had not been included in the Parties original allocation as no time or payroll data had been produced. Defendant has agreed to increase the Settlement Fund by \$36,231.10 to compensate those twenty-one individuals for their alleged damages.

7. The use of the Contingency and Ongoing Cost Fund, and the Additional Settlement Fund, as defined in Section III.B.6 of the Amended Settlement Agreement, means that the allocations for unaffected class members will not be altered or compromised in anyway. Given this, the Parties submit that Notice need only be sent to those individuals whose data was incomplete or missing in order to effectuate valid, due, and sufficient notice.

8. In light of the above, the Parties now jointly request that the Court enter an Order which does the following:

- a) Preliminarily approve the Amended Settlement Agreement attached as Exhibit 1 (ECF No. 68-1) to this Motion as fair, reasonable, and adequate;

- b) Modify the definition of the FED.R.CIV.P. 23 Classes to conform with the Class Definitions described in Section IV.B of the Amended Settlement Agreement;
- c) Approve the Notices of Class Action Settlement in the forms of Exhibit E and F to the Amended Settlement Agreement (ECF Nos. 68-2 and 68-3) for distribution to the twenty-seven members of the Rule 23 Classes identified by the Parties on Exhibit A and approving that the provision of the Notices of Class Action Settlement, in the form of Exhibit E and F, by mail constitutes valid, due, and sufficient notice to affected Rule 23 Classes' Members;
- d) Order that Class Counsel shall mail the Notices of Class Action Settlement, in the form of Exhibits E and F, to the affected Class Members within ten (10) days of the Court's Order Preliminarily Approving the Amended Settlement Agreement;
- e) Order that any of the affected Rule 23 Classes' members who wish to exclude him/herself from the Parties' Settlement of Wisconsin State and/or local law claims as defined in the Agreement must exclude himself/herself per the instructions set forth in the Notice within thirty (30) days of the mailing of the Notice;

f) Order that any of the affected Rule 23 Classes' members who do not exclude him/herself shall be bound by the Court's Order

Finally Approving the Settlement;

g) Order that any of the Rule 23 Classes' members who wish to object in any way to the proposed Settlement Agreement must file and serve such written objections per the instructions set forth in the Notice no later than thirty (30) days after the mailing of the Notice, together with copies of all papers in support of his or her position;

9. The Parties submit that the other matters addressed in the Court's Order Preliminarily Approving the Settlement Agreement (ECF No. 66) remain unchanged.

Dated this 26th day of December, 2018.

Respectfully submitted,

s/ Sean M. Scullen

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